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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,235	09/29/2003	Rudolph Nobis	END 5214	1897
27777	7590	06/12/2008	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			NGUYEN, VI X	
			ART UNIT	PAPER NUMBER
			3734	
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			06/12/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/674,235

Applicant(s)

NOBIS ET AL.

Examiner

Victor X. Nguyen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007 and 29 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 2/11/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1-12) in the reply filed on 2/29/2008 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brinkerhoff et al (5,275,322).

Brinkerhoff et al disclose a medical device as best understood having the limitations as recited in the above listed claims, including: an actuating mechanism 80 associates with a proximal end of a flexible shaft 70 where the shaft comprises a pulling member 94 which is movable therein, where an end effector 61 associates with the distal end of the shaft and the distal end of the pulling member 94, where the actuator mechanism has a first configuration in which the actuator mechanism is able to decouple from the pulling member (fig. 9), where in a second configuration, the actuator mechanism becomes operatively coupled to the pulling member (fig. 8) to operate the end effector, where the actuator is able to move from the second position to a third position (see fig. 10), and where the actuating mechanism comprises a resilient member which is a spring 320 which is able to couple the actuation member to the pulling member, where the resilient member comprises a torsion spring 312, where the actuator 86 is

movable from the first position to the second position by squeezing with a single hand as best seen in fig. 10, and where the end effector is selected from the group consisting of extractors (see col. 2, lines 47-67).

Response to Arguments

3. Applicant's arguments filed 10/12/2007 have been fully considered but they are not persuasive. In response to applicant's argument that Brinkerhoff does not suggest "in which the actuator mechanism is decoupled from the pulling member and a second configuration wherein the actuator mechanism becomes operatively coupled to the pulling member to operate the end effector" (a functional limitation): It is noted that the actuator mechanism 80 has a first configuration in which the actuator mechanism is able to decouple from the pulling member (fig. 9 discloses the actuator handle assembly in an unlocked position, for-example, if a high force is required, the lever 86 can be returned to its inoperative position to retract the driver 62), where in a second configuration, the actuator mechanism becomes operatively coupled to the pulling member (fig. 8, it is noted that the safety release bracket 312 is retracted and the ledge 332 of the latch 88 is disengaged from the plate of the released bracket and the latch 88 can be pivoted to the unlatch position to enable the lever 86 to be operated) to operate the end effector. Thus, a reference needs not show the structure of the recitation in order to meet the claim language but rather the reference needs only be capable of being used with such structure. In response to applicant's argument that Brinkerhoff fails to teach a flexible shaft. It is noted that the flexible shaft 65 of application disclosed in fig. 3 does not have any structure to differentiate relatively to the flexible shaft 70 of Brinkerhoff. In fact, the flexible shaft 70 of Brinkerhoff is made of fiber filled with plastic material (see col. 3, lines 14-26 and col. 12, lines 63-65), which does have

some sort of flexibility within the shaft 70 of Brinkerhoff. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims noted.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/
Primary Examiner, Art Unit 3734

Victor X Nguyen
Examiner
Art Unit 3734

VN
6/6/2008